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Attorneys for [Proposed] Plaintiff-in-Intervention  
A WHITE AND YELLOW CAB, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DISTRICT

L.A Taxi Cooperative, Inc. dba Yellow Cab Co.;  
et al.,

Plaintiffs,

vs.

Uber Technologies, Inc.; Rasier, LLC; and  
Rasier-CA, LLC.

Defendants.

CASE NO.: 3-15-cv-01257-JST

NOTICE OF MOTION FOR  
ORDER GRANTING LEAVE TO  
FILE A WHITE AND YELLOW  
CAB, INC.'s COMPLAINT-IN-  
INTERVENTION FOR DAMAGES  
AND INJUNCTIVE RELIEF  
(F.R.C.P. 24(a) and -(b));  
DEMAND FOR JURY TRIAL  
(PROPOSED COMPLAINT-IN-  
INTERVENTION ATTACHED)  
[FILED CONCURRENTLY WITH  
DECLARATION OF MARYANN  
CAZZELL AND [PROPOSED]  
ORDER]

HEARING DATE: 7/30/2015  
TIME: 2:00 p.m.  
JUDGE: The Hon. JON S. TIGAR  
LOCATION: SAN FRANCISCO  
COURTHOUSE, COURTROOM 9,  
19<sup>TH</sup> FL., 450 Golden Gate Ave., San  
Francisco, CA 94102

CASE MGMT. CONF.: 7/22/2015

COMPLAINT FIL. DATE:  
3/18/2015

TRIAL DATE: NONE

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*NOTICE:* PLEASE TAKE NOTICE that on July 30, 2015 at 2:00 p.m., or as soon thereafter as the matter may be heard, in Courtroom 9 on the 19<sup>th</sup> floor of Northern District U.S. District Court, 450 Golden Gate Ave., San Francisco, CA 94012, Moving Party [Proposed] Complainant-in-Intervention A White and Yellow Cab, Inc., a California corporation, also doing business as “A TAXI CAB” and “1-800-4-MY-TAXI” (“A TAXI”) will present the following Motion to this Honorable Court:

*GROUND*S: At said time and date, A TAXI will seek an Order allowing it to intervene in this action pursuant to *F.R.C.P.* 24(a) or -(b) on the grounds that A TAXI may intervene as of right because it has an unconditional right to do so since it claims an interest relating to the property and transactions that are the subject of the action, is so situated that disposing of the action may as a practical matter impair or impede its ability to protect its interest, and that the existing plaintiffs do not adequately represent that interest; or alternatively that A TAXI's claim as stated in the [Proposed] Complaint-in-Intervention shares with the main action a common question of law or fact. This Motion is based upon this Notice of Motion and on the attached Memorandum of Points and Authorities and the [Proposed] Complaint-in-Intervention, on the Complaint previously filed in this action and any First Amended Complaint to be filed in this action prior to the hearing, on the provisions of *F.R.C.P.* 24(a) and -(b), on such matters of which this Honorable Court may be invited to take Judicial Notice prior to the hearing, on all of the other pleadings, papers, and records on file herein, and on such oral argument as may be presented at the hearing.

*RESPECTFULLY SUBMITTED,*  
**CAZZELL & ASSOCIATES, ATTORNEYS**

By: \_\_\_\_\_  
 MARYANN CAZZELL, ESQ.  
 ATTORNEYS FOR [PROPOSED]  
 COMPLAINANT-IN-INTERVENTION  
 A WHITE AND YELLOW CAB, INC.

1 *A. INTRODUCTION AND SUCCINCT STATEMENT OF FACTS:*

2 A TAXI is an Orange County, California-based taxi company that has been  
3 operating for 29 years in compliance with a complex web of taxicab rules and regulations  
4 which were promulgated by the State, and ceded to the municipal authorities pursuant to  
5 the state directive of *Cal. Gov't Code* section 53075.5 ((Proposed) Complaint-in-  
6 Intervention, paragraphs 1 and 3<sup>1</sup>). Not only is A TAXI fully licensed to pick up taxi fares  
7 everywhere in Orange County, but it also holds a vested rights under a non-exclusive  
8 franchise in Anaheim to be one of only three taxi companies to pick up fares there  
9 (paragraph 24).

10 Beginning as early as 2011 Defendants Uber Technologies, Inc., a Delaware  
11 corporation, Rasier, LLC, a Delaware limited liability company, and Rasier-CA, LLC, a  
12 Delaware limited liability company (hereinafter collectively "UBER,") roughly speaking,  
13 through the development of smart phone "apps," began enabling individuals to use, and  
14 orchestrating the use of, their private automobiles to effectively operate an unlicensed and  
15 unauthorized taxi "fleet." In so doing, UBER taxi business, intentionally diverting the  
16 taxicab fare profits which A TAXI, the plaintiff cab companies named in the lead  
17 complaint, and the other legitimate California-licensed taxi companies would have  
18 received, to UBER (paragraphs 37, 38, and 53.)

19 The Complaint-in-Intervention seeks in relevant part an award of damages  
20 from, and the issuance of injunctive relief against, UBER, based upon the direct harm that  
21 its unfair business practices, unfair trade practices, and false advertising acts caused and  
22 continue to cause A TAXI (paragraphs 1-10 of the PRAYER.)

23 By its Complaint-in-Intervention similarly-situated plaintiff A TAXI seeks  
24 relief very much like that sought in the lead Complaint by nineteen other California-based  
25 legitimate taxi companies (one of which - CABCO, INC. - is also based in Orange County.)  
26 The Complaint-in-Intervention contains a more expansive set of allegations about unfair

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27 <sup>1</sup> All further references to paragraphs contained in this Brief are references to  
28 paragraphs of the [Proposed] Complaint-in-Intervention.

1 competition, stating claims against the California Public Utilities Commission (“CPUC”)  
2 that assist and clarify in stating claims upon which relief can be based, and do not prevent  
3 intervention.

4  
5 *B. STATEMENT OF ISSUES TO BE DECIDED:*

6 *1) WHETHER A TAXI IS ENTITLED TO INTERVENTION OF RIGHT*  
7 *UNDER F.R.C.P. 24(a); or alternatively,*

8 *2) WHETHER A TAXI IS ENTITLED TO PERMISSIVE INTERVENTION*  
9 *UNDER F.R.C.P. 24(b).*

10  
11 *C. ARGUMENT:*

12 (1) A TAXI IS ENTITLED TO INTERVENTION OF RIGHT.

13 *F.R.C.P. 24(a)(2)* allows a party to intervene as of right where it “claims an  
14 interest relating to the property or transactions that is the subject of the action, and is so  
15 situated that disposing of the action may as a practical matter impair or impede the  
16 movant’s ability to protect its interest, unless existing parties adequately represent that  
17 interest.”<sup>2</sup>

18 When analyzing a motion to intervene of right under Rule 24(a)(2), we apply  
19 a four-part test: (1) the motion must be timely; (2) the applicant must claim a  
20 “significantly protectable” interest relating to the property or transaction  
21 which is the subject of the action; (3) the applicant must be so situated that  
22 the disposition of the action may as a practical matter impair or impede its  
23 ability to protect that interest; and (4) the applicant’s interest must be  
24 inadequately represented by the parties to the action.

25 *The Wilderness Society v. U.S. Forest Service*, 630 Fed.3d 1173, 1179 (9th Cir. 2011)  
26 (citing from *Sierra Club v. EPA*, 995 Fed.2d 1478, 1484 (9<sup>th</sup> Cir. 1993), which in turn cited

27  
28 <sup>2</sup> The timeliness requirement is addressed in more detail in the Section (2)  
(*infra*), the discussion of which is incorporated herein by this reference.

1 from *Scotts Valley Band of Pomo Indians v. United States*, 921 Fed.2d 924, 926 (9<sup>th</sup> Cir.  
2 1990).)

3 In allowing intervention of right even in a National Environmental Policy  
4 Act (“NEPA”) action (which historically have applied a categorical prohibition on  
5 intervention as of right at the liability stage of the case,) the *Wilderness Society* Court stated  
6 that in NEPA actions, as in all cases, the “operative inquiry” for the “putative intervenor”  
7 should be “whether ‘the interest is protectable under some law’ and whether ‘there is a  
8 relationship between the legally protected interest and the claims at issue’” (citing to *Sierra*  
9 *Club, Id.*)

10 In this case A TAXI certainly claims an interest in the subject matter of the  
11 lead case - *California taxi companies vs. the Entities that would put them out of business*.  
12 The interest is “significantly protectable” because it comprises the entirety of A TAXI’s  
13 business - its vested (paragraph 51) property rights in its ability to operate as a taxi  
14 company.

15 In this situation, the analysis of the *Sierra Club* and *The Wilderness Society*  
16 criteria listed under parts (3) and (4) above go hand-in hand: A TAXI’s situation *vis-a-vis*  
17 the lead Complaint is such that its interests may be impaired or impeded if it is denied  
18 intervention, yet A TAXI’s interests are not being adequately represented by the existing  
19 plaintiffs.

20 A TAXI is a California taxi company just like each of the 19 plaintiffs in the  
21 lead case, but its interests are not adequately represented by those plaintiffs. Should the  
22 lawsuit proceed to an unfavorable disposition *without* A TAXI’s participation, that holding  
23 will very likely constitute binding precedent *against* A TAXI’s claims against UBER.  
24 Quite simply, A TAXI will lose its “day in Court.” A TAXI’s interests are not adequately  
25 represented by the Plaintiffs in the lead Complaint, because (at least at this stage) that  
26 pleading does not allege facts clearly explaining why UBER’s acts effect unfair  
27 competition for A TAXI, which is bound by egregious Orange County taxi operating rules.  
28 Further, the lead Complaint does not address the behind-the-scenes enactment (the CPUC

1 TNC Classification) that enabled UBER to operate “*de facto*” taxicabs, and which has  
2 made it so difficult for California taxi companies to state viable claims against UBER in  
3 Court - since UBER is operating under “color of (CPUC) law.”<sup>3</sup> At the end of the day it  
4 may prove necessary for other plaintiffs to also challenge the CPUC TNC Classification in  
5 order to pierce the aegis of UBER’s TNC “license” that allows it to operate what are  
6 effectively taxicabs, without complying with any of the taxicab regulations.

7           The allegations of the lead Complaint further fail to adequately represent A  
8 TAXI because they do not explain that authentic taxicabs must be governed by *local*  
9 *authorities* pursuant to the authority ceded to them by the State under *Cal Gov’t Code*  
10 section 53075.5 - and not by the CPUC (paragraphs 25, 26, 27, and 36.) And while the lead  
11 Complaint focuses on safety issues in the context of unfair advertising, it misses an  
12 important one - UBER’s failure to make any provisions for picking up the ten percent of  
13 taxi passengers who require “demand responsive service” that need assistance under the  
14 Americans with Disabilities Act (“ADA”) (paragraph 93(c).)

15           A prospective intervenor “has a sufficient interest for intervention purposes  
16 if it will suffer a practical impairment of its interests as a result of the pending litigation.”  
17 *California ex rel. Lockyer v. United States*, 450 Fed.3d 436, 441 (9<sup>th</sup> Cir. 2006). That is the  
18 situation here. If A TAXI is not allowed to intervene, the case will proceed and as noted  
19 above the holding will likely be binding upon A TAXI because its position, legally and  
20 factually, is so similarly-situated to the 19 plaintiffs in the lead case, especially CABCO.  
21 Yet these plaintiffs are not adequately representing A TAXI’s interests, because at least for  
22 now, they have failed to challenge the constitutionality of the “enabling statute” for  
23 UBER’s California operations - the TNC Classification. A TAXI believes that the claims  
24 against UBER and the CPUC as stated in its [Proposed] Complaint are integrally related -  
25 as demonstrated by the detailed exposition of facts that relate to both sets of Defendants-in-  
26

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27           <sup>3</sup> As noted in the [Proposed] Complaint-in-Intervention, UBER’s operations have been  
28 banned in many U.S. Cities and in several Countries all over the world (paragraph 48.) Here in  
California UBER has built-in protection in the form of the CPUC TNC Classification, which A  
TAXI maintains is unconstitutional and should be declared void.

Intervention as alleged in that pleading. It only makes sense to adjudicate these issues together - and all of them together with the claims of the 19 plaintiffs in the lead case.

In evaluating requests to intervene as of right, the Ninth Circuit “normally follow ‘practical and equitable considerations’ and construe the Rule ‘broadly in favor of proposed intervenors’.” *The Wilderness Society*, supra at p. 801 (citing to *United States v. City of Los Angeles*, 288 Fed.3d at 397-98 (9<sup>th</sup> Cir. 2002) (internal quotation marks omitted) (other citations omitted).) A TAXI should be allowed intervention as of right because it meets the statutory and case criteria. Further as expressed below an Order allowing intervention will serve the interests of judicial economy and promote an efficient resolution of the issues involved in the Taxi v. UBER claims.

## 2) A TAXI IS ENTITLED TO PERMISSIVE INTERVENTION.

*F.R.C.P.* 24(b)(1)(B) allows permissive intervention where the movant “has a claim or defense that shares with the main action a common question of law or fact.”

This one is easy. A TAXI shares many claims against UBER with the plaintiffs in the lead case. In addition to the Claims that share the exact same name in the two Complaints - Violation of the *Lanham Act*, the Unfair Competition statutes, and Violation of *False Advertising Law* - there is A TAXI’s pendent state law claim under the *Unfair Practices Act* - which shares most of the same questions of law or fact as do the three named claims. At the end of the day both complaints are brought by California taxicab companies seeking relief against UBER for UBER’s acts in misleading the traveling public, false advertising, and unfair competition, all of which had the effect of stealing plaintiffs’ legitimate taxi business, income, and profits, harming plaintiffs’ reputation, and destroying or threatening to destroy competition.

Moreover, A TAXI meets the additional requirement of *F.R.C.P.* 24(b) that the Court in its discretion can find that the intervention will not unduly delay or prejudice the adjudication of the original parties’ rights. These factors are addressed under subparts (a), (b), and (c) immediately below.

1 (a) *A TAXI's Motion is "timely" under Rule 24(b)(1) and Counsel acted*  
2 *Diligently in Presenting this Motion.*

3 As noted in more detail in the accompanying DECLARATION OF  
4 MARYANN CAZZELL, the text of which is incorporated herein, this Motion was filed as  
5 promptly as was realistically possible once A TAXI learned of the case's existence.

6 The lead complaint was filed on March 18, 2015, exactly three months ago.  
7 According to the Case Docket, one of the very first things that the existing parties did was  
8 to stipulate to enlarge the time within which Defendants could respond to the Complaint,  
9 and if the responsive pleading was a Motion, to correspondingly extend and then also to  
10 enlarge the time within which the Plaintiffs in the lead case could respond to the same  
11 **(Docket # 7.)** While those mutual extensions were executory, the case, which had  
12 originally been assigned to the Hon. Maria Elena James, Magistrate Judge, was transferred  
13 to the Hon. Judge Tigar on or after May 12, 2015 pursuant to a RELATED CASE ORDER  
14 **(Docket # 14.)** Because of the Reassignment, the previously-assigned Case Management  
15 Conference and related dates were vacated, and new ones set.

16 Shortly after this time counsel for AWYC contacted counsel for the  
17 plaintiffs in the lead case, advised that AWYC would be seeking to intervene, and asked  
18 whether counsel would be willing to stipulate to the same, shortly thereafter forwarding a  
19 copy of the proposed pleading. Counsel for plaintiffs then waited a full nine days before  
20 responding that they were unwilling to so stipulate. Having received this response,  
21 AWYC's counsel then had to prepare the within Motion and [Proposed] Order, the  
22 Declaration, the Certificate of Interested Entities and the Notice of Appearance, and to  
23 ready all of these documents for submission. This was accomplished in less than a week.  
24 Meanwhile, there have been no dispositive rulings in the matter; discovery has not even  
25 been initiated. Nothing will have "changed" drastically between now and then. AWYC  
26 acted diligently and promptly in bringing the Motion, and intervention should be allowed.

27 ///

28 ///

1 (b) *Further, no unreasonable delay will result from an Order allowing*  
2 *Intervention.* At page 17, lines 5 and 6 of “PLAINTIFF’S OPPOSITION TO  
3 DEFENDANTS’ MOTION TO DISMISS” filed literally one week ago on June 11<sup>th</sup>: the  
4 Plaintiff in the lead case represent that “... *this case is in its nascency, and there has not yet*  
5 *been any discovery...*” (emphasis added.) The Rule 12(b)(6) Motion has not yet been heard,  
6 nor has this Honorable Court yet conducted the first Case Management Conference.<sup>4</sup> This  
7 case is still “new” *there will be no prejudice* to any of the parties in the lead case by the  
8 entry of an Order allowing intervention.

9  
10 (c) *This Honorable Court’s Exercise of Discretion:*

11 This Honorable Court has broad discretion to grant the within Motion if it  
12 finds that this is in the overarching interests of justice, expediency, and access to the courts.

13 Addressing a request for intervention as of right (the rationale for which  
14 applies even more to a request for permissive intervention,) the Court in *Nuesse v. Camp*,  
15 385 Fed.2d 694, 700 (D.C. Cir. 1967) explained that “the ‘interest’ test is primarily a  
16 practical guide to disposing of lawsuits by involving as many apparently concerned persons  
17 as is compatible with efficiency and due process.”

18 It is understood that this was the rationale of this Honorable Court when, on  
19 May 12, 2015 it deemed the lead Complaint sufficiently related to case #C-14-05615-JST  
20 (*Philliben et al. v. UBER, etc.*) that it ordered that the lead Complaint be transferred from  
21 Magistrate Judge James’ Courtroom, to this one. Compared to A TAXI’s [Proposed]  
22 Complaint, *Philliben* is also an action against UBER, but at that point the similarities stop.  
23 *Philliben* was an UBER driver, the named plaintiff in a class action of drivers seeking relief  
24 on employment-related claims. His is not a taxi action. Still, this Honorable Court found it  
25 efficient to deem those cases related so as to address the claims of “apparently concerned  
26 persons” seeking relief as against UBER.

27  
28 <sup>4</sup> although it is expected that these hearings will have taken place prior to the time that  
the within Motion can be heard.

1 A TAXI intends to present its claim one way or another. A TAXI's  
2 Complaint should be brought in Federal Court, since it is based on *Lanham Act*, 42 U.S.C.  
3 section 1983 civil rights claims, and several challenges made under the *U.S. Constitution*.  
4 Moreover, both sets of Defendants-in-Intervention are based in San Francisco, so it follows  
5 that this case should "land" here. Under the *Nuesse (supra)* rationale, it only makes sense  
6 that A TAXI be allowed to intervene in this relatively-new, Taxi Company v UBER lawsuit  
7 so that A TAXI's lawsuit can be addressed in a manner that is consistent with efficiency,  
8 judicial economy, and due process.

9  
10 **CONCLUSION:**

11 Based upon all of the foregoing, it is respectfully requested that this  
12 Honorable Court grant the within Motion and deem the concurrently-submitted  
13 [PROPOSED] COMPLAINT-IN-INTERVENTION filed, or that this Honorable Court  
14 enter such other Order pertaining to the relation of the two cases as it deems appropriate, or  
15 enter whatever other Order or grant whatever other relief it should deem just and proper.

16  
17 DATED: June 18, 2015

*RESPECTFULLY SUBMITTED,*

*CAZZELL & ASSOCIATES, ATTORNEYS*

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19  
20 /S/ Maryann Cazzell

21 By: \_\_\_\_\_  
22 MARYANN CAZZELL, ESQ.  
23 ATTORNEYS FOR [PROPOSED]  
24 COMPLAINANT-IN-INTERVENTION  
25 A WHITE AND YELLOW CAB, INC.  
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